

Friday, 12 April 2019

Weekly Immigration Law Review A Weekly Bulletin listing Decisions of Superior Courts of Australia covering immigration

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Executive Summary (1 minute read)

Hong v Minister for Immigration and Border Protection (FCAFC) - migration law - cancellation of appellant's visa under s501(3A) *Migration Act 1958* (Cth) - appeal dismissed

Kaur v Minister for Immigration and Border Protection (FCAFC) - migration law - fraudulent conduct of migration agent - controversy concerning terms of declaratory relief - whether 'indifference to fraud' - appeal allowed

ARP18 v Minister for Home Affairs (FCA) - migration law - refusal to grant class XE 790 Safe Haven Enterprise Visa - appeal dismissed

BUU18 v Minister for Home Affairs (FCA) - migration law - safe haven enterprise (subclass 790) visa - appeal dismissed

CED16 v Minister for Immigration and Border Protection (No 2) (FCA) - migration law - costs - appeal allowed on ground not raised before primary judge - parties to bear own costs

Summaries With Link (Five Minute Read)

Hong v Minister for Immigration and Border Protection [2019] FCAFC 55

Full Court of the Federal Court of Australia

Logan, Bromwich & Wheelahan JJ

Migration law - Minister's delegate cancelled appellant's visa under s501(3A) *Migration Act 1958*

(Cth) on basis appellant had 'substantial criminal record' and serving prison term - , (cancellation decision) - delegate declined to revoke cancellation decision because appellant 'represented an unacceptable risk to the Australian community' and community's protection outweighed 'countervailing considerations' - Administrative Appeals Tribunal affirmed delegate's decision - primary judge dismissed application for judicial review - 'Falun Gong point' - 'evasiveness finding' - applicability of principles in *AYY17 v Minister for Immigration and Border Protection* [2018] FCAFC 89 - whether 'factual foundation' for Falun Gong point - whether evasiveness finding 'legally unreasonable' - held: appeal dismissed.

[Hong](#)

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Kaur v Minister for Immigration and Border Protection [2019] FCAFC 53

Full Court of the Federal Court of Australia

Murphy, Mortimer & O'Callaghan J

Migration law - appeal concerned question whether Federal Circuit Court erroneously rejected first appellant's claims that 'fraudulent conduct of her migration agent' invalidated her application for a visa - controversy concerning terms of declaratory relief which appellants sought - whether visa application 'affected by third party fraud' - principles applicable to 'public law fraud' - whether primary judge's findings were open - whether erroneous finding of indifference of first and second appellants to the fraud - whether erroneous finding that failure to withdraw application was amount to 'indifference to fraud' - adequacy of reasons - held: appeal allowed.

[Kaur](#)

[From Benchmark Friday, 12 April 2019]

ARP18 v Minister for Home Affairs [2019] FCA 472

Federal Court of Australia

Burley J

Migration law - Minister's delegate refused to grant appellant class XE 790 Safe Haven Enterprise Visa - Immigration Assessment Authority (Authority) affirmed delegate's decision - Federal Circuit Court of Australia dismissed application for judicial review - whether Authority constructively failed to exercise jurisdiction by refusing to consider "new information" - whether Authority erroneously failed to consider whether International Treaty Obligations Assessment - s473DD *Migration Act 1958* (Cth) - held: appeal dismissed.

[ARP18](#)

[From Benchmark Friday, 12 April 2019]

BUU18 v Minister for Home Affairs [2019] FCA 457

Federal Court of Australia

Perram J

Migration law - Minister's delegate refused to grant appellant a safe haven enterprise (subclass 790) visa - Immigration Assessment Authority (Authority) affirmed delegate's decision - Federal

Circuit Court dismissed application for judicial review - whether failure by Authority to consider whether appellant would 'suffer harm' - whether failure by Authority to inquire whether 'root-level BNP activists and leaders were subject to persecution' - whether appellant was denied opportunity by Federal Circuit Court to provide information or amend application - whether failure to assess integer of claim - whether denial of procedural fairness - held: appeal dismissed.

[BUU18](#)

[From Benchmark Friday, 12 April 2019]

CED16 v Minister for Immigration and Border Protection (No 2) [2019] FCA 438

Federal Court of Australia

Derrington J

Migration law - costs - Court allowed appeal in proceedings - parties sought 'supplementary orders' concerning orders of Federal Circuit Court - 'main dispute' concerned costs orders - determination of costs - 'successful appellant' contended costs should follow event - Minister submitted appellant had succeeded on ground not advanced before primary judge - held: parties to bear own costs.

[CED16](#)

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A Midsummer Night's Dream, Act II, Scene I [Over hill, over dale]

By: William Shakespeare, 1564 - 1616

A wood near Athens. A Fairy speaks.

Over hill, over dale,
Thorough bush, thorough brier,
Over park, over pale,
Thorough flood, thorough fire,
I do wander every where,
Swifter than the moon's sphere;
And I serve the fairy queen,
To dew her orbs upon the green:
The cowslips tall her pensioners be;
In their gold coats spots you see;
Those be rubies, fairy favours,
In those freckles live their savours:
I must go seek some dew-drops here
And hang a pearl in every cowslip's ear.
Farewell, thou lob of spirits: I'll be gone;
Our queen and all her elves come here anon.

https://en.wikipedia.org/wiki/William_Shakespeare

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